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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,143	12/23/2003	Thomas M. Schaub	11884 / 406701	7478
23838 7590 10/14/2008 KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005				
EXAMINER SEE, CAROL A				
ART UNIT		PAPER NUMBER		
3696				
MAIL DATE		DELIVERY MODE		
10/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/743,143

Applicant(s)

SCHAUB ET AL.

Examiner

Carol See

Art Unit

3696

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Ella Colbert/ Primary Examiner

/Carol See/
Examiner, Art Unit 3696

Examiner acknowledges amendment of claims 10-12 in Arguments/Remarks filed 9/2/2008.

Continuation of 11, does NOT place the application in condition for allowance because:

Argument: Examiner rejected claim 10 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant amended and asserted the meaning of amended claim 10 is clear. The element "responsive to a proposed postings of revenue, determining whether a revenue calculation of any control objects addresses the proposed posting" identifies those control objects that would use the proposed postings of revenue in a revenue calculation. The Examiner is referred to FIG. 3 and paragraphs 19-23 for an illustration of an embodiment of the claimed invention.

Response: According to MPEP 2106(II)(c), while it is appropriate to use the specification to determine what applicant intends a term to mean, a positive limitation from the specification cannot be read into a claim that does not itself impose that limitation. Here, the claim language "addresses" a proposed posting, it does not indicate that the posting is used in a calculation. Applicant's claimed meaning cannot be ascertained from the wording of the claim. Accordingly, Examiner maintains the rejection under 35 USC 112, 2nd paragraph.

According to MPEP 715 (R-3), the showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.

Applicant argument (9/2/2008, pg. 6): Applicants have submit attached as an appendix an affidavit under 37 C.F.R. § 1.131 which asserts that the date of conception was at the latest November 28, 2002, and that the date of reduction to practice was at the latest January 16, 2003. Therefore, SAPR3 (www.sap.com, June 2003) (hereinafter "SAPR3") is not prior art under 35 U.S.C. 103(a) or under 35 U.S.C. 102(a), because SAPR3 was published after both the date of conception and the date of reduction to practice.

Response: Regarding conception date and reduction to practice: Examiner has reviewed exhibits and notes that the 2002 date appears on exhibit B, a screen shot indicating a "created on date" of 28.11.2002. However, this screen shot showing a date fails to show exactly what was created on that date; further, exhibit C fails to provide any additional clarification. References to slides can be seen in the notation "reviewed PPT slides of the Design Review"; however, no indication is apparent regarding the connection to the slides presented in exhibit A in order to make a further connection to the asserted dates. Regarding exhibit D, in which the January 16 date is seen, a reference is also made to AVC checks; however, the same argument applies in that there is no indication of the connection of the slides in exhibit A to these communications in order to make a connection to the asserted dates.

In addition, with respect to language of the independent claims, the affidavit filed on 9/2/2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the SAPR3 reference. The scope of the affidavit is not commensurate with the scope of the claims. Applicant makes a comparison of independent claims 6, 10 and 16 to the content of the slides presented in Exhibit A. However, the information in the slides fails to convey the recited claim limitations. For example, exhibit A, pg. 7, fails to convey the concept of availability control rules represented by control objects or testing as recited in claims 6, 10 and 16; pg. 5 of the exhibit A asserts that an error is issued, and not that a transaction is rejected as claim 6 recites. With respect to claims 10 and 16, pg. 5 of Exhibit A asserts that an error is issued, and not that a transaction is blocked, as in claims 10 and 16. Accordingly, Examiner's rejection of claims 6-7, 10-13, 15-19, and 21 remains using the SAPR3 reference.